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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 555

STATE OF WASHINGTON, EX REL. THE WASHINGTON WATER POWER COMPANY, ET AL.,
Appellants,

vs.

THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CHELAN COUNTY, HONORABLE FRED KEMP, JUDGE

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

STATEMENT OF APPELLEE MAKING AGAINST JURISDICTION AND MOTION TO DISMISS APPEAL

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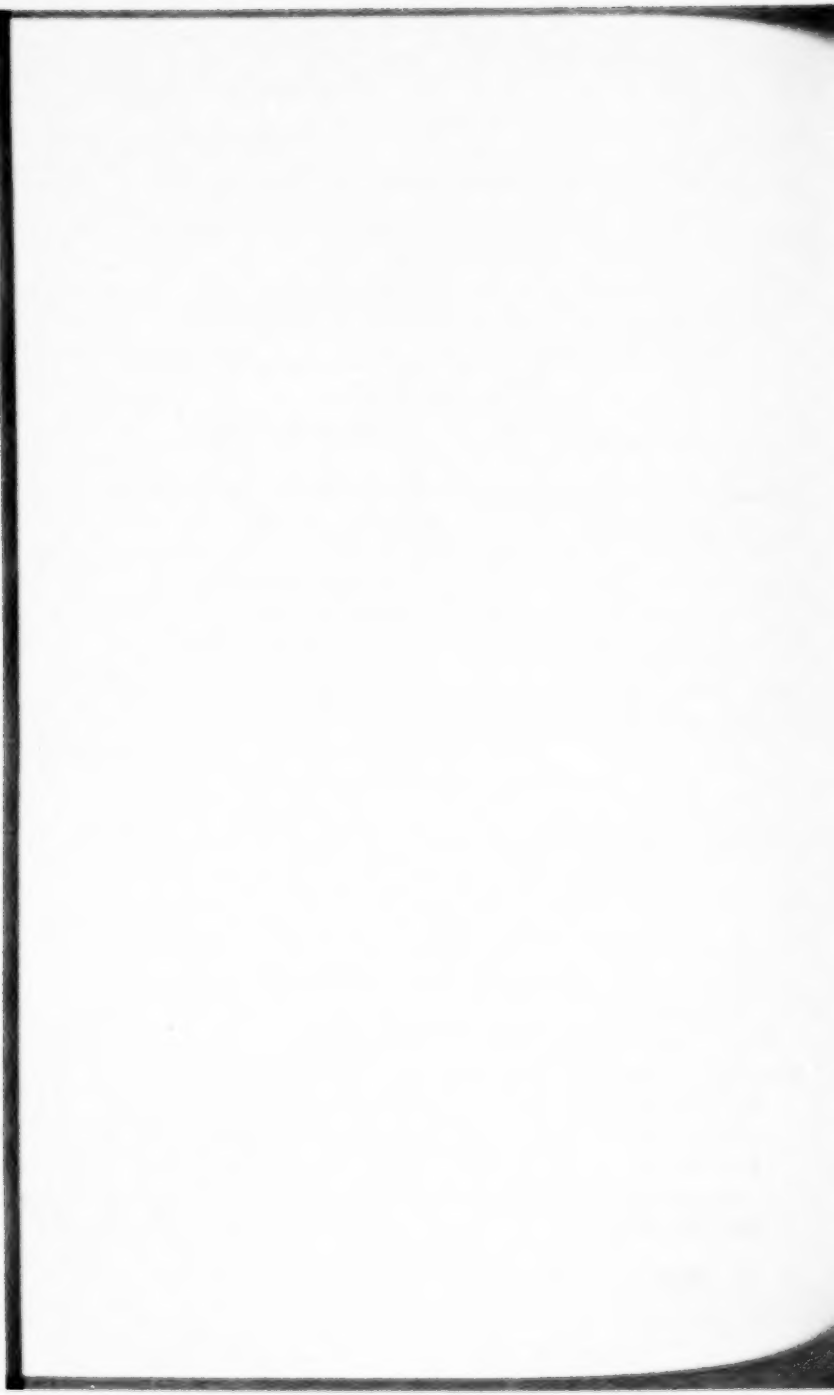

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 555

STATE OF WASHINGTON EX REL. THE WASHINGTON WATER POWER COMPANY, A CORPORATION, CITY FARMERS TRUST COMPANY, A CORPORATION, AND RALPH E. MORTON, AND CHELAN JOINT SCHOOL DISTRICT NO. 129, A MUNICIPAL CORPORATION, AND TOWN OF CHELAN, A MUNICIPAL CORPORATION,

Appellants,

vs.

THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CHELAN COUNTY, HONORABLE FRED KEMP, JUDGE,

Appellee

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

STATEMENT OF APPELLEE MAKING AGAINST JURISDICTION AND MOTION TO DISMISS APPEAL

---

1. Appeal Is Not from a Final Judgment

On October 30, 1945, Public Utility District No. 1 of Chelan County, Washington, instituted an eminent domain

proceeding in the Superior Court of Chelan County to condemn public utility property owned by The Washington Water Power Company and located in Chelan and Douglas Counties, in the State of Washington. Pursuant to a hearing thereon, and on November 19, 1948, The Honorable Fred Kemp, Judge of the said Superior Court, made and entered a decree of public use and necessity adjudging the contemplated taking of said property to be necessary and the contemplated use thereof to be a public use.

The appellants here thereafter applied to the Supreme Court of the State of Washington for a writ of review from the decree of public use and necessity. A writ of review was granted and on July 21, 1949, the Supreme Court of the State of Washington filed an opinion declaring the judgment of the trial court to be correct and affirming the decree of public use and necessity. A rehearing having been applied for and denied, judgment of the Supreme Court of the State of Washington was entered on the 6th day of September, 1949, affirming the Judgment of the trial court in entering the decree of public use and necessity. Appellants seek an appeal to this Court under Title 28, United States Code, Section 1257 (2) from said judgment.

REMINGTON'S REVISED STATUTES, Section 11610, 1945 Supplement, grant to public utility districts the right of eminent domain and require that it be exercised and instituted pursuant to resolution of the commission and conducted in the same manner and by the same procedure as is or may be approved by law for the exercise of the power of eminent domain by incorporated cities and towns in the State of Washington in the acquisition of utility properties.

REMINGTON'S REVISED STATUTES, Section 9217, provides that whenever an ordinance has been passed by a state legislative authority, the carrying out of which will require

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that property be taken or damaged for a public use, such city shall file a petition in the superior court of the county where the property sought to be condemned is situated, praying that just compensation shall be ascertained for the property to be so taken or damaged.

REMINGTON'S REVISED STATUTES, Section 9219, provides that upon the filing of a petition for the taking or damaging of property by a city or town, a summons, returnable as summons in other civil actions, shall be issued and served upon the person made parties defendant, together with a copy of the petition.

REMINGTON'S REVISED STATUTES, Section 9221, provides that upon the return of the summons the court shall proceed to the hearing of said petition and shall impanel a jury to ascertain the just compensation to be paid for the property taken or damaged.

REMINGTON'S REVISED STATUTES, Section 9230, provides that any final judgment rendered by the court upon any finding of the jury, or upon findings of the court if a jury be waived, shall be lawful and sufficient condemnation of the property taken or damaged, upon the payment of the amount of such findings; such judgment is final as to the damages caused by reason of the taking or damaging of the property unless appealed from and no such appeal shall delay the taking or damaging of the property if the amount of the judgment and costs is paid into court for the owners and parties interested.

REMINGTON'S REVISED STATUTES, Section 9231, provides that upon proof that just compensation has been paid into court, the court shall enter an order that the city or town shall have the right at any time thereafter to take possession of or damage the property, and thereupon, the title to any property so taken shall be vested in fee simple in such city or town.

It thus appears that under the statutes of the State of Washington, an eminent domain proceeding such as is here involved is divided into three parts: first, a proceeding to obtain a decree of public use and necessity; secondly, a proceeding to ascertain the just compensation to be paid for the taking or damaging of the property; and, lastly, the entry of a decree of appropriation upon payment into court of the award for the taking or damaging of the condemnee's property.

The leading case in this Court relating to the finality of judgments in condemnation cases is *State of Washington ex rel. Grays Harbor Logging Co.* v. *Superior Court of Washington for Chehalis County*, 243 U. S. 251, 61 L. Ed. 702, 37 Sup. Ct. 295, which is reported by the Official Reporter under the title of "Grays Harbor Logging Co. vs. Coats-Fordney Logging Company." In this case the Court held that a decree of public use and necessity under the same Washington Statutes and Constitution here involved was not a final judgment within the meaning of Section 237, Judicial Code (now 1257, Judicial Code). Referring to such condemnation proceeding under the statutes of Washington, this Court said:

> "In this state of the local practice it is argued that the judgment that has been entered should be regarded as finally disposing of a distinct and definite branch of the case, and therefore subject to our review as a final judgment; leaving the ascertainment of the compensation and damages to be dealt with as a separate branch of the case. Wheeling & B. Bridge Co. *v.* Wheeling Bridge Co., 138 U. S. 287, 290, 34 L. ed. 967, 968, 11 Sup. Ct. Rep. 301, is cited in support of this contention, and certainly seems to lend color to it. But, notwithstanding the decision in that case, we cannot regard a condemnation proceeding taken under the authority of the Constitution of Washington and the Act of 1913 as severable into two distinct branches.

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The Constitution forbids that the property be taken without compensation first made or ascertained and paid into court for the owner, and of course, in case of controversy, compensation cannot be made to the owner until the amount of it has been ascertained. It follows that the judgment entered by the superior court to the effect that petitioner was entitled to condemn and appropriate the land in question for its right of way must be construed as being subject to a condition that the proper compensation be first ascertained and paid." (p. 705.)

"When the litigation in the state courts is brought to a conclusion, the case may be brought here upon the Federal questions already raised as well as any that may be raised hereafter; for although the state courts, in the proceedings still to be taken, presumably will feel themselves bound by the supreme court (82 Wash. 503), as laying down the law of the case, this court will not be thus bound (United States *v.* Denver & R. R. G. R. Co., 191 U. S. 84, 93, 48 L. ed. 106, 109, 24 Sup. Ct. Rep. 33; Messenger *v.* Anderson, 225 U. S. 436, 444, 56 L. ed. 1152, 1156, 32 Sup. Ct. Rep. 739; Coe *v.* Armour Fertilizer Works, 237 U. S. 413, 418, 59 L. ed. 1027, 1029; 35 Sup. Ct. Rep. 625). (p. 706.)

The question of finality of state court judgment under the Federal Judicial Code is the subject of a carefully and well written article in 43 Columbia Law Review, 1002, from which we can not do better than to quote:

"The soundness of this decision (referring to the Grays Harbor case) is hardly open to question. A condemnation proceeding is a unitary lawsuit which if successful will terminate in a money award. A ruling that the taking is authorized and not barred by constitutional restraints may forever resolve that question, so far as the state courts are concerned, but it does not finally dispose of the controversy any more than the controversy in a negligence case is ended by a ruling that the action is not barred by the statutes of limitations. In the subsequent hearing on assessments of

> damages, new federal questions could arise, which would force the Supreme Court to review the case piecemeal if it were to assume jurisdiction upon a mere order for condemnation. Or the award may turn out to be so generous that the condemnee will gladly accept it and drop the litigation, so that the Supreme Court will never be called upon to render a decision. Accordingly, the Court has consistently applied the Grays Harbor doctrine to all condemnation cases." (p. 1007.)

A very recent case which cites and follows the doctrine of the *Grays Harbor* case is *Catlin et al.* v. *United States*, 324 U. S. 229, 65 Sup. Ct. Rep. 631. In this case a condemnation proceeding was instituted in the District Court under War Purposes Act of 1917 and the Declaration of Taking Act. Pursuant thereto the Secretary of War filed a declaration and deposited in court a sum of money as the estimated compensation for the lands. The court thereupon entered judgment decreeing that title had vested in the United States and declaring the right of just compensation, and holding the cause open for further "orders, judgments, and decrees." The condemnees moved to vacate and dismiss the original petition. Upon denial of the motion, an appeal was taken from the order denying the motion to vacate and dismiss and from the "judgment" on the declaration of taking. On the appeal this Court held that the decision was not a final one within the meaning of Section 128 of the Judicial Code, saying (p. 633-634):

> "Their right to appeal rests upon Section 128 of the Judicial Code. This limits review to "final decisions" in the District Court. A "final decision" generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. St. Louis I. M. & S. R. R. *v.* Southern Express Co., 108 U. S. 24, 28, 2 S. Ct. 6, 8, 27 L. Ed. 638. Hence, ordinarily in condemnation proceedings appellate review may be had only upon an order or judgment disposing of the whole case, and adjudicating all rights,

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including ownership and just compensation, as well as the right to take the property. This has been the repeated holding of decisions here. The rule applies to review by this Court of judgments of state courts, in advance of determination of just compensation, although by local statute "judgments of condemnation," i. e., of the right to condemn particular property, are reviewable before compensation is found and awarded. Wick *v.* Superior Court, 278 U. S. 574, 49 S. Ct. 94, 73 L. Ed. 515; Id., 278 U. S. 575, 49 S. Ct. 94, 73 L. Ed. 515; Public Service Co. of Indiana *v.* City of Lebanon, 305 U. S. 558, 59 S. Ct. 84, 83 L. Ed. 352; Id., 305 U. S. 671, 59 S. Ct. 143, 83 L. Ed. 435; cf. Dieckmann *v.* United States, 7 Cir., 88 F. 2d 902. The foundation of this policy is not in merely technical conceptions of "finality." It is one against piecemeal litigation. "The case is not to be sent up in fragments • • •." Luxton *v.* North River Bridge Co., 147 U. S. 337, 341, 13 S. Ct. 346, 358, 37 L. Ed. 194. Reasons other than conservation of judicial energy sustain the limitation. One is elimination of delays caused by interlocutory appeals."

The most recent decision of this Court holding that it will not review a state court's judgment until the litigation has been finally concluded is *Republic Natural Gas Co.* v. *State of Oklahoma,* 334 U. S. 62, 68 Sup. Ct. Rep. 972, which was decided May 3, 1948. The appeal was taken to this Court from a judgment of the Supreme Court of Oklahoma affirming an order of Oklahoma's Corporation Commission directing Republic Natural Gas Co. to take gas ratably from a gas well of applicant, Peerless Oil and Gas Company in one of three ways, but leaving open for later determination in event of failure to reach agreement, the terms upon which Republic must take the gas, the rates which it must pay on purchase, or may charge if it sells as agent of Peerless. In holding that the judgment was not final the Court said:

"No self-enforcing formula defining when a judgment is "final" can be devised. Tests have been indicated which are helpful in giving direction and emphasis to decision from case to case. Thus, the requirement of finality has not been met merely because the major issues in a case have been decided and only a few loose ends remain to be tied up—for example, where liability has been determined and all that needs to be adjudicated is the amount of damages. Bruce *v.* Tobin, 245 U. S. 18, 38 S. Ct. 7, 62 L. Ed. 123; Martinez *v.* International Banking Corp., 220 U. S. 214, 223, 31 S. Ct. 408, 411, 55 L. Ed. 438; Mississippi Central R. Co. *v.* Smith, 295 U. S. 718, 55 S. Ct. 830, 79 L. Ed. 1673. On the other hand, if nothing more than a ministerial act remains to be done, such as the entry of a judgment upon a mandate, the decree is regarded as concluding the case and is immediately reviewable. Board of Commissioners *v.* Lucas, 93 U. S. 108, 23 L. Ed. 822; Mower v. Fletcher, 114 U. S. 127, 5 S. Ct. 799, 29 L. Ed. 117.

"But a decision that a taking by eminent domain is for a public use, where the amount of compensation has not been determined, is not deemed final, certainly where the property will not change hands until after the award of compensation. Grays Harbor Logging Co. *v.* Coats-Fordney Logging Co., 243 U. S. 251, 37 S. Ct. 295, 61 L. Ed. 702; cf. Luxton *v.* North River Bridge Co., 147 U. S. 337, 13 S. Ct. 356, 37 L. Ed. 194; Catlin *v.* United States, 324 U. S. 229, 65 S. Ct. 631, 89 L. Ed. 911."

It will be noted that in this case a minority of the Court dissented on the ground that the asserted analogy to the Grays Harbor, Catlin, and Luxton cases did not hold because of entirely different situations presented, but thereby nevertheless indicating adherence to the rule of lack of finality in cases involving condemnation.

As we understand appellants, they concede that this Court has held in the *Grays Harbor Logging Co.* v. *Coats-*

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Fordney Logging Co., 243 U. S. 251, 61 L. Ed. 702, 37 Sup. Ct. Rep. 295, and other cases, that a decree of publics use and necessity in an eminent domain proceeding under the Washington statutes and constitution is not a final judgment within the meaning of Section 1257 of the Judicial Code, but contend that the rule therein announced does not control here because of the decisions in *State ex rel. Northwestern Electric Co., et al.* v. *Superior Court*, 27 Wash. (2), 694, and *Thomas J. Brady* vs. *Terminal Railroad Association of St. Louis*, 302 U. S. 678, 82 L. Ed. 523, 58 Sup. Ct. Rep. 134.

The *Northwestern Electric Co.* case, *supra*, holds that an order of public use and necessity becomes final unless review be taken to the state supreme court and that review may be had only by certiorari, there being no statute allowing an appeal. However, this Court in the *Grays Harbor* case, *supra*, in construing the identical statutes and constitution of Washington relating to condemnation, refused to regard the decree of public use and necessity as a final judgment subject to review, but construed it as being subject to a condition that the proper compensation be first ascertained and paid. In respect to the contention that the Washington state court treated the order of public use and necessity as final, this Court stated (p. 706): "When the litigation in the state court is brought to a final conclusion, the case may be brought here upon the Federal question already raised as well as any that may be raised hereafter; for although the state courts, in the proceedings still to be taken, presumably will feel themselves bound by the decision heretofore made by the supreme court (82 Wash. 503), as laying down the law of the case, this court will not be thus bound * * *."

The appellants mistake the meaning of *Thomas J. Brady* v. *Terminal Railroad Association of St. Louis*, 302 U. S.

678, 82 L. Ed. 523, 58 Sup. Ct. Rep. 134, *supra*. In that case the Supreme Court of Missouri, in upsetting a verdict for the plaintiff, held that no case sufficient to go to a jury had been proved under either the Federal Safety Appliance Act or the state common law. The judgment of the Missouri Supreme Court specified that the trial court's judgment be "reversed", without stating whether a new trial should, or could, be had. Accordingly the petition for certiorari was at first denied "as it does not appear from the record that there is a final judgment." A petition for rehearing called attention to a line of decision in Missouri establishing that where the highest court of the state entered a judgment of "simple reversal", no possibility of further proceedings existed other than the ministerial act of filing the judgment in the court below. The court accordingly granted certiorari, "it appearing that the judgment of the Supreme Court of Missouri is a final judgment under the decisions of that Court cited by petitioner in his petition for rehearing." (See 43 Columbia Law Review 1002 (p. 1005)). As pointed out by the author of the Article in the Columbia Law Review, *supra*, the case established the power of the Supreme Court to inquire into local practice in order to ascertain what actual effect the judgment may have under state law. In other words, if state rules of practice impart to the judgment a finality in effect that is lacking in appearance this Court may properly make inquiry. This does not mean, however, that the label affixed to the judgment by state law can settle whether the judgment is final under Section 1257 of Title 28 of the United States Code. The Court will consider state law in order to ascertain the incidents and effect of a particular judgment; once having done so, it must then apply its own criteria of finality, and not the state court's, as is illustrated by the leading case of *Grays Harbor Logging Co.* v. *Coats-Fordney Logging Co.*, hereinbefore cited.

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2. This Appeal does not involve any substantial Federal question.

As a further ground for opposing the jurisdiction of the United States Supreme Court in this appeal, we contend that no substantial Federal question is involved.

Title 28, United States Code, Section 1257 (2) provides:

> "1257. State Courts—Appeal—Certiorari
>
> Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (1) • • •
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

Admittedly the Supreme Court of Washington did sustain the validity of certain statutes which appellants have contended were repugnant to those of the United States, but such an allegation alone is not sufficient in itself to confer jurisdiction. In determining jurisdiction the character of the question must be considered. *Equitable Life Assurance Society* v. *Brown*, 187 U. S. 308, 311, 23 Sup. Ct. Rep. 123, 47 L. Ed. 190.

One of the statutes of the state of Washington involved is Remington's Revised Statutes, Section 11610-d, 1945 Supplement, which authorized public utility districts to sell electric current for all uses.

> "• • • with full and exclusive authority to sell and regulate and control the use, distribution, rates, services, charges, and price thereof free from the jurisdiction and control of the Director of Public Works and the Division of Public Utilities."

This statute was the basis for resolution No. 51, by which Public Utility District No. 1 of Chelan County authorized the issuance of revenue bonds to finance the acquisition of the properties and bound itself to establish and maintain rates sufficient to provide for retirement of the bonds and all costs of operation of the properties.

Appellants maintain that the Washington statute above cited in so far as it authorizes a public utility district to issue revenue bonds containing covenants by the district to maintain rates adequate to retire said bonds in connection with the condemnation of a Federal licensed power project is repugnant to Vol. 41, United States Statutes at Large, Sec. 19, p. 1073, U. S. C. A. Title 16, Sec. 812, on the theory that this section confers jurisdiction on the Federal Power Commission to regulate and control the rates and charges of a district which becomes the transferee of a Federal license. We believe that even a casual reading of Section 812 of the Federal Power Act and of other sections of the Act defining the terms used in Section 812, clearly shows that a public utility district, being a 'municipal corporation', is exempt from rate regulation by the Federal Power Commission, and therefore the Washington statutes involved in this proceeding are in no wise repugnant to Section 812. The entire Federal Power Act is contained in Sections 791 through 825, U. S. C. A. Title 16, and in the interest of brevity we will cite the Act by section number.

Under Section 812 of the Act only the following classes of licensees are subject to regulation by the Federal Power Commission:

> "As a condition of the license, every licensee under this chapter which is a *public-service corporation*, or a person, association, or corporation owning or operating any project and developing, transmitting, or distributing power for sale or use in public service, shall

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abide by such reasonable regulation of the services to be rendered to customers or consumers of power, and of rates and charges of payment therefor, as may from time to time be prescribed by any duly constituted agency of the State in which the service is rendered or the rate charged. That in case of the development, transmission, or distribution, or use in public service of power by any licensee under this chapter or by its customer engaged in public service within a State which has not authorized and empowered a commission or other agency or agencies within said State to regulate and control the services to be rendered by such licensee or by its customer engaged in public service, or the rates and charges of payment therefor, or the amount or character of securities to be issued by any of said parties, it is agreed as a condition of such license that jurisdiction is hereby conferred upon the commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control: *Provided*, That the jurisdiction of the commission shall cease and determine as to each specific matter of regulation and control prescribed in this section as soon as the State shall have provided a commission or other authority for the regulation and control of that specific matter." (Italics curs.)

Section 796 (3) of the Act defines "corporations" as follows:

"(3) 'corporation' means any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. *It shall not include* 'municipalities' as hereinafter defined;" (Italics ours.)

Section 796(7) defines "municipality" as follows:

"(7) 'municipality' means a city, county, irrigation district, drainage district, or *other political subdivision*

> or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power;" (Italics ours.)

Section 797(e) authorizes the commission:

> "To issue licenses to citizens of the United States, or to any association of such citizens, or to any corporation organized under the laws of the United States or any State thereof, *or to any State or municipality* for the purpose of constructing, operating, and maintaining dams, * * *" (italics ours.)

Section 807 expressly reserves:

> "* * * the right of the United States or any State or municipality to take over, maintain, and operate any project licensed under this chapter at any time by condemnation proceedings upon payment of just compensation. * * *"

A public utility district is a municipal corporation, Remington's Revised Statutes, Section 11606, providing:

> "Municipal corporations, to be known as public utility districts, are hereby authorized for the purposes of this act and may be established within the limits of the State of Washington, as provided herein."

We therefore submit that it was not the purpose or intention of the Congress, under Section 812, to confer jurisdiction upon the Federal Power Commission to regulate rates of licensees which are municipalities, and that the Washington statutes are not repugnant to Section 812 of the Act.

In addition to Section 812 of the Act, appellants urge that the Washington statutes involved in the condemnation action are also repugnant to Section 803(h) of the Federal Power Act. Section 803(h) reads as follows:

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"(h) That combinations, agreements, arrangements, or understandings, express or implied, to limit the output of electric energy, to restrain trade, or to fix, maintain or increase prices for electric energy or service are hereby prohibited."

In this connection, appellants argue that the covenant in the district's bond resolution binding the district to maintain rates adequate to retire the bonds and pay all costs of operation is "a combination to fix, maintain, or increase prices for electric energy" within the meaning of this section.

No cases involving Section 803(h) have been cited by appellants, and our research has failed to reveal any. Apparently, the statute has never been invoked. This statute is a part of the original Federal Power Act enacted in 1920, and during the almost thirty years of its existence no occasion has arisen which would require its application. And this notwithstanding the fact that during those years the development of power resources was handled primarily by private power companies. At least one reason which would suggest itself is the existence of rate controlling bodies such as the Federal Power Commission for those utilities subject to its jurisdiction, and the Public Service Commissions of the states for those not subject to the Federal Power Commission.

We believe that a sufficient answer to this contention of appellants is contained in the decision of the Supreme Court of the State of Washington which is the subject of this appeal, and from which we quote:

"As grounds for its contention that the proposed bond-issue contract is "repugnant to the laws of the United States", the company relies upon Section 803(h) which provides:

"'(h) Combinations, agreements, arrangements, or understandings, express or implied, to limit the out-

put of electrical energy, to restrain trade, or to fix, maintain, or increase prices for electrical energy or service are hereby prohibited.' "

"That section was enacted for the sole purpose of prohibiting monopolistic combinations, agreements, etc. It is the 'anti-trust' section. For example, an agreement by The Washington Water Power Company, the Puget Sound Power & Light Company, and the Chelan P. U. D. to limit the output of electrical energy, or to restrain trade, or to fix, maintain, or increase prices for electrical service to the detriment of consumers would be prohibited. But it was not the intention of the provision in question to prohibit an agreement between the district and its bondholders that the district would maintain rates to pay the principal and interest of the bonds. Furthermore, as we have stated previously, by becoming the assignee, the district does not *ipso facto* become subject to jurisdiction by the commission. Admitting *arguendo*, that the commission could exercise jurisdiction to regulate rates, there is nothing in the record that 'upon complaint of any person aggrieved or upon its own initiative', the commission will ever exercise such regulation, or that it would not take into consideration the cost of operation and also the cost of purchasing the facility."

State ex rel. Washington Water Power Co. *v.* Sup. Ct. for Chelan County, Vol. 134 Wn. Dec. 179, 187.

It will be borne in mind that the only statutes of the United States which appellants contend are contravened by the statutes of Washington are the two sections of the Federal Power Act, i.e., Section 812 and Section 803(h). (See pages 5 and 6 of Appellants Statement as to Jurisdiction). Therefore, unless the Washington statutes are repugnant to those two sections of the Federal Power Act, no substantial Federal question is involved in this appeal and this Court is without jurisdiction to review the judgment of the Supreme Court of Washington. We respectfully

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submit that we have pointed out in this brief that the Washington statutes are in no wise repugnant to the Federal statutes to which attention has been directed, and that no substantial Federal question is presented.

In conclusion appellee moves this Court that this appeal be dismissed on the grounds and for the reasons herein set forth, i.e., (1), The Order of Public Use and Necessity appeal is not from a final judgment, and (2), No substantial Federal question is involved.

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